

21 June 1988
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MEMORANDUM FOR: Deputy Director for Administration
Director, Office of Security
ADGC/AL&MS/OGC
C/ICAD/OGC
C/ALD/OGC
C/LIT/OGC

OGC

FROM:

Legislation Division
Office of Congressional Affairs

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SUBJECT: Grassley Amendment - Action on FY '89 Version

1. Attached for your information is a letter sent by Director Miller, Office of Management and Budget (OMB), to the leadership of the Senate concerning deletion from the Fiscal Year 1989 Treasury, Post Office and General Government Appropriations bill of the so-called "Grassley Amendment" restricting Secrecy agreements. The provision was identical to the FY '88 version which became the subject of litigation in AFGE v. Garfinckel.

2. We are advised that based on efforts by the Senate Select Committee on Intelligence and on the letter, the provision was deleted from the bill during last week's Senate Appropriations Committee "markup."

3. These efforts will be continued to insure that the provision is not included in the House-Senate conference version of the bill.

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Attachment

OCA/LEG/ (21 June 1988)

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Distribution:

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JUN 1988

The Honorable John C. Stennis
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Administration requests that your Committee strike Section 621, relating to national security employee nondisclosure agreements, from H.R. 4775, the Treasury-Postal Service Appropriations Bill for FY 1989.

Section 621 is identical to Section 630 of the FY 1988 Treasury-Postal Service Appropriations Act contained in the FY 1988 further appropriations continuing resolution (P.L. 100-202). The provision purports to forbid the U.S. Government from using appropriated funds to implement or enforce certain agreements with Federal employees that they not disclose without authority classified information to which they gain access during their Federal employment.

On May 27, 1988, in National Federation of Federal Employees v. United States, No. 87-2284-OG, the United States District Court for the District of Columbia held that Section 630 of the FY 1988 Treasury-Postal Service Appropriations Act violates the Constitution. The Court stated:

"The statute [Sec. 630] impermissibly restricts the President's power to fulfill obligations imposed upon him by his express constitutional powers and the role of the Executive in foreign relations. Section 630 is, therefore, unconstitutional." (slip op. at 30)

Section 621 of H.R. 4775 is both unconstitutional and unwise. The President possesses the constitutional authority to require Federal employees who voluntarily assume positions of high trust bringing access to the Nation's most sensitive secrets to agree to keep those secrets. Such nondisclosure agreements are essential safeguards in protecting the national security.

We urge your Committee to strike Section 621.

Sincerely yours,


James G. Miller III
Director

IDENTICAL LETTERS SENT TO HONORABLE PETE DOMENICI,
HONORABLE MARK O. HATFIELD, HONORABLE ROBERT DOLE,
AND HONORABLE DENNIS DECONCINI